

TONIA MCCULLOUGH,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
vs.	§	45 TH JUDICIAL DISTRICT
	§	
BIANCA FIGUEROA,	§	
JAMES MARMOLEJO,	§	
Defendants.	§	BEXAR COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMAN OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post

information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I will give you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence [unless you are told otherwise]. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence [unless you are told otherwise].

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.
8. Do not answer questions by drawing straws or by any method of chance.
9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.
10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."
11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The

same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

A fact may be established by direct evidence or circumstantial evidence or both. A fact is established by direct evidence when provided by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

DEFINITIONS

Definition No. 1

"**Negligence**" means failure to use ordinary care; that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

Definition No. 2

If a person is confronted by an "**emergency**" arising suddenly and unexpectedly, which was not proximately caused by any negligence on his part and which, to a reasonable person, requires immediate action without time for deliberation, his conduct in such an emergency is not negligence or failure to use ordinary care, if, after such emergency arises, he acts as a person of ordinary prudence would have acted under the same or similar circumstances.

Definition No. 3

"**Ordinary Care**" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

Definition No. 4

“Proximate cause” means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

QUESTION 1:

Did the negligence, if any, of those named below proximately cause the occurrence in question?

Answer "Yes" or "No."

- a. JAMES MARMOLEJO
- b. BIANCA FIGUEROA

Yes	Yes
Yes	Yes

If you answered "yes" to Question No. 1 for more than one of those named below, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the occurrence. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

QUESTION 2:

For each person you found caused or contributed to cause the injury, find the percentage of responsibility attributable to each

1. James Marmolejo 12 %

2. Bianca Figueroa 88 %

TOTAL 100%

QUESTION NO. 3:

What sum of money, if paid now in cash, would fairly and reasonably compensate TONIA MCCULLOUGH for her injuries, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately in dollars and cents for damages, if any, for TONIA MCCULLOUGH.

a. Physical pain sustained in the past.

Answer: \$ 750,000

~~750,000~~
~~750,000~~ all 12

b. Mental anguish sustained in the past.

Answer: \$ 100,000

~~100,000~~

11-1

c. Physical pain that, in reasonable probability, TONIA MCCULLOUGH will sustain in the future.

Answer: \$ 350,000

~~350~~

11 v

d. Mental anguish that, in reasonable probability, TONIA MCCULLOUGH will sustain in the future.

Answer: \$ 200,000

~~200,000~~

e. Physical impairment sustained in the past.

Answer: \$ 500,000

~~500,000~~

f. Physical impairment that, in reasonable probability, TONIA MCCULLOUGH will sustain in the future.

Answer: \$ 500,000

g. *Medical Care expenses* that TONIA MCCULLOUGH incurred in the past.

Answer: \$ 0

0

h. *Medical Care expenses* that, in reasonable probability, TONIA MCCULLOUGH will incur in the future.

Answer: \$ 500,000

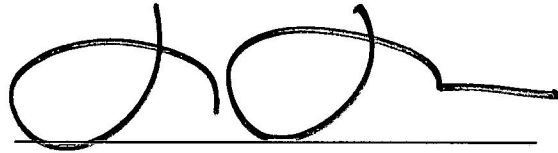
~~500,000~~

i. Disfigurement sustained in the past.

Answer: \$ 25,000

j. Disfigurement that, in reasonable probability, TONIA MCCULLOUGH will sustain in the future.

Answer: \$ 0

A handwritten signature in black ink, consisting of two large, overlapping loops followed by a horizontal line extending to the right.

HON. TINA TORRES

**Judge Tina Torres
407th District Court**

PRESIDING JUROR

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

INSTRUCTIONS FOR SIGNING THE VERDICT CERTIFICATE

1. You may answer the questions on a vote of 10 or 11 jurors. The same 10 or 11 jurors must agree on every answer in the charge. This means you may not have one group of jurors agree on one answer and a different group of jurors agree on another answer.
2. If 10 or 11 jurors agree on every answer, those 10 or 11 jurors sign the verdict. If 11 jurors agree on every answer, those 11 jurors sign the verdict. If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all 11 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 or 11 who agree on every answer will sign the verdict.

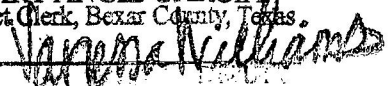
Do you understand these instructions? If you do not, please tell me now.

  **Judge Tina Torres**
40th District Court
HON. TINA TORRES

FILED
11:23 O'CLOCK A M

JUL 22 2022

MARY ANGIE GARCIA
District Clerk, Bexar County, Texas

BY 

VERDICT CERTIFICATE

CHECK ONE:

- Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

Jerry Conn JR.
Signature of Presiding Juror

Jerry Conn JR.
Printed Name of Presiding Juror

- Our verdict is not unanimous. 10 OR 11 of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE

NAME PRINTED

1. Jerry Conn JR.

Jerry Conn, JR.

2. [Signature]

Yolanda Cortez

3. Priscilla Vidal

Priscilla Vidal

4. Dominik Metz

Dominik Metz

5. Susan Kriz

SUSAN KRIZ

6. Courtney Baker

Courtney Baker

Charge of the Court

FILED
2:00 O'CLOCK P.M.
JUL 22 2022
MARY ANGIE GARCIA
District Clerk, Bexar County, Texas
[Signature]

Gloria G. Lara

GLORIA G. LARA

7. Gloria Dominguez

Gloria Dominguez

8. Emma Pommerewing

Emma Pommerewing

9. Irene Allen

Irene Allen

10. Matthew Cavazos

Matthew Cavazos

11.